

1 Thomas S. Gingras, Esq.  
2 EIDE & GINGRAS, P.C.  
3 425 G Street, Suite 930  
4 Anchorage, AK 99501  
5 Telephone: (907) 279-0930  
6 Facsimile: (907) 279-0933  
7 E-mail: [tsgingras@egpalaska.com](mailto:tsgingras@egpalaska.com)

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10 IN THE UNITED STATES DISTRICT COURT  
11  
12 FOR THE DISTRICT OF ALASKA

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14 ROBERT H. WOLCOFF and HEATHER )  
15 WOLCOFF, )  
16 Plaintiffs, )  
17 vs. )  
18 UNITED STATES OF AMERICA, and )  
19 ANNE MARIE YOST, )  
20 Defendants. ) Case No. 3:08-CV-00032 (JWS)

21  
22 **PLAINTIFFS' FIRST AMENDED COMPLAINT**

23  
24 **INTRODUCTION**

25  
26 1. In 2005, Robert Wolcoff ("Mr. Wolcoff") sought care for back pain at the  
27 Alaska Native Medical Center, an agent of the United States of America. Mr. Wolcoff  
28 received numerous back surgeries which were complicated by infection and required  
29 additional surgeries.

The care Mr. Wolcoff received at the Alaska Native Medical Center fell below the relevant medical standard of care and constitutes medical malpractice. Mr. Wolcoff and his wife Heather (“Mrs. Wolcoff”) were both harmed by the care Mr. Wolcoff received.

## **JURISDICTION AND VENUE**

2. Plaintiffs hereby reallege the allegations contained in paragraph 1 of this Complaint as though fully set forth herein.

3. This action against the United States of America arises under the Federal Tort Claims Act, 28 U.S.C. §§ 2671 et seq.

4. Plaintiffs timely filed Tort Claims Act administrative claims to the United States Department of Health and Human Services. The United States did not respond to the administrative claims within six months, so the claims are deemed denied. All conditions precedent to a Federal Tort Claims Act action have been met.

5. This Court has jurisdiction under, and by virtue of, 28 U.S.C. § 1336(b).

6. Venue is founded in this judicial district based on 28 U.S.C. §§ 1391(e) and 1402(b), as the acts complained of occurred in this district.

## PARTIES

7. Plaintiffs hereby reallege the allegations contained in paragraphs 1 through 6 of this Complaint as though fully set forth herein.

8. Plaintiff, Robert Wolcoff, is a United States citizen and resident of the state of Alaska.

9. Plaintiff, Heather Wolcoff, is a United States citizen and resident of the state of Alaska.

10. Defendant, the United States of America, has waived sovereign immunity, pursuant to the Federal Tort Claims Act.

11. Defendant, Anne Marie Yost, is, upon information and belief, a United States citizen and is currently not an Alaska resident

## FACTS

12. Plaintiffs hereby reallege the allegations contained in paragraphs 1 through 11 of this complaint as though fully set forth herein.

13. In 2005, Robert Wolcoff was experiencing pain in his back, hip, and leg. Mr. Wolcoff was subsequently diagnosed with a disc herniation and underwent his first back surgery at Alaska Native Medical Center on June 22, 2005.

14. In total, Mr. Wolcoff underwent five separate surgical procedures at Alaska Native Medical Center. The first procedure, referenced above, was a lumbar surgery that involved a foraminal decompression and laminectomy. There was little improvement in Mr. Wolcoff's symptoms and two repeat lumbar surgeries were performed by a different surgeon.

15. During the course of those repeat surgeries, Mr. Wolcoff's post-operative wound became infected. Two additional surgeries were then necessary to drain and debride the post-operative wound. Several months later a spinal cord stimulator was placed to assist with pain control.

1           16. The first surgical procedure was inadequate, which led to the necessity for  
2 the second surgical procedure. Further surgical procedures and an infection followed. In  
3 addition, Mr. Wolcoff was a poor candidate for surgery but there was little conservative  
4 treatment prior to proceeding with surgery.

5           17. As a result of the inadequate and prolonged course of treatment Mr. Wolcoff  
6 received from Alaska Native Medical Center, both he and his wife have suffered  
7 economic and non-economic damages, including pain, suffering, loss of enjoyment of  
8 life, emotional distress, and loss of consortium.

10           CAUSES OF ACTION

11           Count I

12           18. Plaintiffs hereby reallege the allegations contained in paragraphs 1 through  
13 17 of this complaint as though fully set forth herein.

15           19. This claim is brought by Plaintiffs against Defendant, the United States of  
16 America, for actions taken by the staff at the Alaska Native Medical Center, all acting  
17 within the scope of their employment.

18           20. The care Mr. Wolcoff received was below the applicable professional  
19 medical standard of care.

21           21. As a result of the inadequate care Mr. Wolcoff received, he suffered both  
22 economic and non-economic damages.

23           22. As a result of the inadequate care Mr. Wolcoff received, Mrs. Wolcoff  
24 suffered both economic and non-economic damages.

## Count II

23. Plaintiffs hereby reallege the allegations contained in paragraphs 1 through  
22 of this complaint as though fully set forth herein.

24. Defendant United States of America never disclosed, and in fact concealed its purported position that defendant Anne Marie Yost was not an employee of defendant United States of America but was instead an independent contractor.

25. Plaintiff's discovered this position on the part of the United States of America through its answer which was filed in response to plaintiffs' initial complaint herein.

26. At all times relevant to this action, defendant Anne Marie Yost was either an actual or apparent agent of the defendant United States of America, acting within the course and scope of her authority as an apparent or actual agent.

27. In providing medical services, the Defendants and each of them owed plaintiffs a duty of care.

28. The care provided by Defendants and each of them was below the applicable professional, medical standard of care.

29. As a result of the inadequate care Mr. Wolcoff received, he suffered both economic and non-economic damages as described above.

30. As a result of the inadequate care Mr. Wolcoff received, Mrs. Wolcoff suffered both economic and non-economic damages

### Count III

31. Plaintiffs hereby reallege the allegations contained in paragraphs 1 through 30 of this complaint as though fully set forth herein.

32. To the extent, if any, that defendant Anne Marie Yost was an independent contractor for the defendant United States of America, the defendant United States of America retained such control over her conduct so as to be responsible for any damages caused by her failure to meet the applicable professional, medical standard of care.

33. The Defendants and each of them provided medical care to Mr. Wolcoff that was below the applicable professional, medical standard of care.

34. As a result of the above-described inadequate care, Mr. and Mrs. Wolcoff suffered both economic and non-economic damages as described above.

#### Count IV

35. Plaintiffs hereby reallege the allegations contained in paragraphs 1 through 34 of this complaint as though fully set forth herein.

36. In providing health care to plaintiff Robert Wolcoff as described above, Defendants and each of them owed plaintiffs a duty of care.

37. The care Defendants and each of them provided to Mr. Wolcoff was below the applicable professional, medical standard of care.

38. As result of the inadequate care Mr. Wolcoff received, both he and Mrs. Wolcoff suffered economic and non-economic damages as described above.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

A. For a judgment against Defendants jointly and severally in an amount of Two Million Ninety-Four Thousand Four Hundred Thirty-One Dollars (\$2,094,431) as to Mr. Wolcoff;

B. For a judgment against Defendant jointly and severally in an amount of Four Hundred Thousand Dollars (\$400,000) as to Mrs. Wolcoff;

C. For an award, to the extent allowed under applicable law, of Plaintiffs' attorneys' fees and costs in prosecuting this action;

D. For pre- and post-judgment interest; and

E. For such other and further relief as the Court deems just and reasonable.

DATED at Anchorage, Alaska this 30<sup>th</sup> day of March 2009.

EIDE & GINGRAS, P.C.  
Attorneys for Plaintiffs  
Robert H. and Heather Wolcoff

By: s/Thomas S. Gingras  
Thomas S. Gingras  
425 G Street, Suite 930  
Anchorage, AK 99501  
Phone: (907) 279-0930  
Fax: (907) 279-0933  
E-mail: [tsgingras@egpalaska.com](mailto:tsgingras@egpalaska.com)  
Alaska Bar No. 7811098

Certificate of Service

I hereby certify that on March 30, 2009, a copy of the foregoing document was served electronically on Daniel R. Cooper Jr., Esq.

s/Thomas S. Gingras

**Lide & Gingras, P.C.**  
425 G Street, Suite 930  
Anchorage, Alaska 99501  
(907) 279-0930 telephone  
(907) 279-0933 fax

Plaintiff's First Amended Complaint  
*Wolcoff v. United State of America*  
Case No. 3:08-CV-00032-JWS